

112 Box 45 - JGR/Pro Bono (18) – Roberts, John G.: Files
SERIES I: Subject File

THE WHITE HOUSE
WASHINGTON

February 25, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Request for Remarks About Charles Kuralt
to be Published in "On the Road with Charles
Kuralt"

The publisher of a forthcoming book by Charles Kuralt has written the President to ask that he "contribute a few words about Charles for use in our publicity, promotion, and advertising." The attached draft reply for your signature advises the publisher that White House policy precludes such commercial endorsements by the President.

Attachment

THE WHITE HOUSE

WASHINGTON

February 25, 1985

Dear Mr. Nyren:

Thank you for your letter of February 11 to the President. That letter described a forthcoming book by Charles Kuralt, and requested that the President contribute a few words concerning Mr. Kuralt for use in promoting the book.

Please be advised that established White House policy generally prohibits any use of the name, likeness, photograph, or signature of the President in any manner that suggests or could be construed as endorsement of a commercial product or enterprise. Adherence to this policy requires us to decline your request. I trust you will understand that our response is in no sense an adverse reflection on Mr. Kuralt.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

*(a great fan of Mr.
Kuralt)!*

Mr. Neil S. Nyren
Senior Editor
The Putnam Publishing Group
200 Madison Avenue
New York, New York 10016

FFF:JGR:aea 2/25/85
bcc: FFFielding
JGRoberts ✓
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 25, 1985

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Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Neil S. Nyren
Senior Editor
The Putnam Publishing Group
200 Madison Avenue
New York, New York 10016

FFF:JGR:aea 2/25/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID# 288742

PR014-08

INCOMING

JR

DATE RECEIVED: FEBRUARY 14, 1985

NAME OF CORRESPONDENT: MR. NEIL S. NYREN

SUBJECT: REQUESTS REMARKS ABOUT CHARLES KURALT TO BE
PUBLISHED IN NEW BOOK, ON THE ROAD WITH
CHARLES KURALT

ACTION

DISPOSITION

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACT CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
ANNE HIGGINS		ORG	85/02/14			1/1
M. B. Borden	REFERRAL NOTE:	A	85/02/19			1/1
D. H. Borden	REFERRAL NOTE:	±	85/02/19			1/1
WAT 18	REFERRAL NOTE:	D	85/02/19			285/03/01
	REFERRAL NOTE:					1/1
	REFERRAL NOTE:					1/1

COMMENTS:

ADDITIONAL CORRESPONDENTS:

MEDIA: L INDIVIDUAL CODES:

MI MAIL

USER CODES: (A)

(B)

(C)

*ACTION CODES:	*DISPOSITION CODES:	*OUTGOING	*
*A-APPROPRIATE ACTION	*A-ANSWERED	*CORRESPONDENCE:	*
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	*TYPE RESP=INITIALS	*
*D-DRAFT RESPONSE	*C-COMPLETED	*OF SIGNER	*
*F-FURNISH FACT SHEET	*S-SUSPENDED	*CODE = A	*
*I-INFO COPY/NO ACT NFC		*COMPLETED = DATE OF	*
*R-DIRECT REPLY W/COPY		*OUTGOING	*
*S-FOR-SIGNATURE			*
*X-INTERIM REPLY			*

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OPOB) EXT. 2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

5
AH

2872

THE PUTNAM PUBLISHING GROUP

200 MADISON AVENUE · NEW YORK, NEW YORK 10016 · (212) 576-8900 · TELEX 42-2386 COMAGEN

February 11, 1985

President Ronald Reagan
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20510

Dear President Reagan,

/I am delighted to be publishing a book by a very special man
this fall: Charles Kuralt's ON THE ROAD WITH CHARLES KURALT.


No one else writes quite the same kind of story he does -- the warm, funny, open-hearted explorations of America and Americans he has been giving us since 1967 -- stories from the backroads, "Where there is room for diversity and the occurrence of small miracles," that tell us something not only about the people he portrays, but about ourselves and this infinite and various country.

His book will gather together the best of his pieces, both long and short. Here you'll find the Missouri doctor whose fee is a Mason jar of buttermilk or sometimes just a handshake; the wildest horse trader in Texas; the last of the authentic Alaskan pioneers; the town that invented its own language to bamboozle tourists ("If a brightlighter come in, you want to harp a little narchness on him, you know"); the world-class croquet player from back-country Kentucky; the men who built the Golden Gate Bridge; the poet of steam engines ("You lean on the arm rest and see smoke trail back over the train and see that headlight shining out there and hear that ole girl talk to you in the language just you and she understand..."); and the Spivey family of Blackfoot, Idaho: Jerry, Terry, Sherry, Merry, Kerry, Cherry, Perry, Zerry, Berry -- and Joe. Here are blacksmiths, moonshiners, auctioneers, prospectors, boatbuilders, fishermen, dreamer, heroes and eccentrics -- all evidence that, as Kuralt says, "Americans are up to all sorts of surprising things. You never know what -- until you go out and take a look."

We don't yet have galleys of his book, but I know you are familiar with his work and his unique style. Would it be possible for you to contribute a few words about Charles for use in our publicity, promotion and advertising? I realize your schedule is busy, but I know how much your support would mean in bringing the book to the attention of its audience. If you need material on which to comment, please let me know and I'll be glad to put some together for you.

Thank you very much for your time and attention -- and I look forward to hearing from you.

Best,



Neil S. Nyren
Senior Editor

THE WHITE HOUSE

WASHINGTON

February 26, 1985

MEMORANDUM FOR LINAS KOJELIS
ASSOCIATE DIRECTOR
OFFICE OF PUBLIC LIAISON

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Letter from Balys Rackauskas Regarding
U.S. Foreign Policy and Proposed State
Department Reply

As we have discussed, Counsel's Office has reviewed the proposed State Department reply to Balys Rackauskas, and finds no objection to it from a legal perspective.

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

- ☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
 Date Correspondence
 Received (YY/MM/DD) 1 1

Name of Correspondent: Linas Kaylor, OPL

☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: letter from Bayle Rackaushus regarding
U.S. Foreign policy, State Dept. draft
includes extended reference to Karl Linnas'
case.

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)

Action
Code

Tracking
Date
YY/MM/DD

Type
of
Response

Code

Completion
Date
YY/MM/DD

CUHOU

ORIGINATOR

DDI 85102108

Referral Note:

R 8510211

Referral Note:

585102121

Referral Note:

Referral Note:

Referral Note:

ACTION CODES:

- A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 to be used as Enclosure

- I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:

- A - Answered
 B - Non-Special Referral
 C - Completed
 S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: See ID: DDI 614

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

THE WHITE HOUSE

WASHINGTON

February 6, 1985

294513cu

MEMORANDUM FOR JOHN ROBERTS, OGC — Is this us?
FROM: LINAS KOJELIS, OPL
SUBJECT: Correspondence from Balys Rackauskas

John, the attached letter from Mr. Balys Rackauskas regarding U.S. foreign policy was forwarded to the State Department for a draft reply. As you will note, however, the draft includes extended reference to the Karl Linnas case. I thought you should take a look at it before it goes out.

UNCLASSIFIED
(CLASSIFICATION)

✓ PL KOJE

S/S # 8500538

DATE January 31, 1985

DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT
TRANSMITTAL FORM

FOR: Mr. Robert C. McFarlane
National Security Council
The White House

REFERENCE:

TO: President Reagan FROM: Mr. Balys Rackauskas
DATE: January 1, 1985 SUBJECT: Deportation Case
of Mr. Karl Linnas


WHITE HOUSE REFERRAL DATED: 1/9/85 NSC # 271614

THE ATTACHED ITEM WAS SENT DIRECTLY
TO THE DEPARTMENT OF STATE

ACTION TAKEN:

- ☒ A draft reply is attached
☐ A draft reply will be forwarded
☐ A translation is attached
☐ An information copy of a direct reply is attached
☐ We believe no response is necessary for the reason
cited below
☐ Other

REMARKS:


Nicholas Platt
Executive Secretary

UNCLASSIFIED
(CLASSIFICATION)



SUGGESTED REPLY United States Department of State

Washington, D.C. 20520

Dear Mr. Rackauskas:

I am replying to your recent message to President Reagan regarding the deportation of a former citizen of the Baltic States to the Soviet Union. I believe you are referring to the case of Mr. Karl Linnas.

Mr. Linnas was stripped of his U.S. citizenship by a federal district court in July 1981, inter alia, on the basis of the court's specific finding that he "did not possess the required good moral character because of his voluntary involvement in the unjustifiable atrocities committed against men, women, and children a relatively short period of time prior to his entry into this country." *United States v. Linnas*, 527 F. Supp. 426, 439 (E.D.N.Y. 1981). Mr. Linnas was found to have been an active, ranking member of the Selbstschutz, the Estonian "self-help" organization which carried out most of the arrests and executions of Jews in Estonia, and to have been head of the concentration camp at Tartu in 1941. The U.S. Court of Appeals for the Second Circuit affirmed the judgment of denaturalization, and the U.S. Supreme Court declined to review the matter.

Mr. Balys Rackauskas,
President,
Association of Lithuanian American
University Professors,
621 Wellington Avenue,
Chicago, Illinois.

A U.S. immigration judge concluded on May 19, 1983 that Mr. Linnas was deportable, denied him relief from deportation, and designated the Soviet Union as a country of deportation. On July 31, 1984, the Board of Immigration Appeals (BIA), affirmed the immigration judge's decision in substantial part but remanded the case for consideration of "the implications of the United States' refusal to recognize the Soviet annexation of Estonia," designation of a country of deportation, and articulation of the statutory basis for selection of the country designated. In re Karl Linnas, BIA, slip opinion at 16-17.

The handling of denaturalization and deportation proceedings by the United States against alleged Nazi persecutors is the responsibility of the Office of Special Investigations of the Criminal Division of the Department of Justice. As the Linnas case is in litigation, we suggest that specific questions relating to the case be directed to that office.

As to whether the deportation of Mr. Linnas to the USSR would be inconsistent with our long-standing policy of non-recognition of the forcible incorporation of the Baltic states by the Soviet Union, the Department of Justice has taken the position that deportation of Mr. Linnas would take place under section 243(a) (7) of the Immigration and Nationality Act, 8 U.S.C. Sec. 1253(a) (7). That section directs deportation to "any country which is willing to accept such alien into its territory." Under that section, Mr. Linnas

would be deported to the Soviet Union solely as a "country willing to accept" him and not in any other capacity, i.e., not as his country of nationality or citizenship. On the basis of this position, the Department of State has concluded deportation of Mr. Linna under 8 U.S.C. Sec. 1253(a) (7) to the Soviet Union would not, as a matter of law, contravene the long-standing and firmly held U.S. policy of non-recognition of the forcible incorporation of Estonia into the Soviet Union. We strongly adhere to that policy and believe it is unaffected by deportation as described above.

As noted above, for further details on the case you may wish to contact the Department of Justice. However, if we can be of further assistance, please feel free to contact us.

Sincerely,

8500538

T H E W H I T E H O U S E O F F I C E

REFERRAL

JANUARY 9, 1985

TO: DEPARTMENT OF STATE

ACTION REQUESTED:

DRAFT REPLY FOR SIGNATURE OF WHITE HOUSE STAFF MEMBER

DESCRIPTION OF INCOMING:

ID: 271614

MEDIA: MAILGRAM, DATED JANUARY 1, 1985

TO: PRESIDENT REAGAN

FROM: MR. BALYS RACKAUSKAS
PRESIDENT
ASSOCIATION OF LITHUANIAN AMERICAN
UNIVERSITY PROFESSORS
621 WELLINGTON AVENUE
CHICAGO IL 60657

SUBJECT: SUPPORTS SPACE DEFENSE, EXPRESSES CONCERN
REGARDING THE DEPORTATION OF A FORMER BALTIC
STATES CITIZEN TO SOVIET RUSSIA

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN
TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE
UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE
(OR DRAFT) TO:
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JANUARY 02, 1985

NAME OF CORRESPONDENT: MR. BALYS RACKAUSKAS

SUBJECT SUPPORTS SPACE DEFENSE, EXPRESSES CONCERN
REGARDING THE DEPORTATION OF A FORMER BALTIC
STATES CITIZEN TO SOVIET RUSSIA

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION		DISPOSITION	
	ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
LINAS KOJELIS	ORG	85/01/02		1/1
REFERRAL NOTE: <u>99 DOS</u>		<u>D 85/01/02</u>		1/1
REFERRAL NOTE:		1/1		1/1
REFERRAL NOTE:		1/1		1/1
REFERRAL NOTE:		1/1		1/1
REFERRAL NOTE:		1/1		1/1

COMMENTS:

ADDITIONAL CORRESPONDENTS: MEDIA:M INDIVIDUAL CODES: _____

PL MAIL USER CODES: (A) _____ (B) _____ (C) _____

*ACTION CODES:	*DISPOSITION CODES:	*OUTGOING	*
*	*	* CORRESPONDENCE:	*
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS	*
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	* OF SIGNER	*
*D-DRAFT RESPONSE	*C-COMPLETED	* CODE = A	*
*F-FURNISH FACT SHEET	*S-SUSPENDED	*COMPLETED = DATE OF	*
I-INFO COPY/NO ACT NEC		* OUTGOING	*
*R-DIRECT REPLY W/COPY *			*
*S-FOR-SIGNATURE *			*
*X-INTERIM REPLY *			*

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OEOB) EXT. 2590
KEEPER HAS WORKSHEET ATTACHED COMPLETED BY SIGNING INCOMING CARDS
MANAGEMENT.

50 BALYS RACKAUSKAS
621 WELLINGTON AVE
CHICAGO IL 60657 01AM
11/2

Western
Union Mailgram

1-000905S001 01/01/85 ICS IPMBNGZ CSP WHSC
3124724347 MGMB TDBN CHICAGO IL 192 01-01 0249A EST

#271614

PRESIDENT RONALD REAGAN
WHITE HOUSE
WASHINGTON DC 20500

8500538

DEAR MR PRESIDENT

OVER A YEAR AGO WE IMPORED YOU TO RUN FOR PRESIDENCY AGAIN AND WE ARE GRATEFUL YOU DID. WE PREDICTED A LANDSLIDE AND IT WAS. THANK YOU FOR HONORING US WITH A THOUGHTFUL LETTER. AMERICA IS IN SAFE HANDS AGAIN. YOUR SPACE DEFENSE IS WORKING IN MOSCOW AND GENEVA. THE STATEMENTS OF THE UNION OF CONCERNED SCIENTISTS - THE OLD CHARLES RIVER GANG - ARE NOT HONEST. IT'S GOOD YOU ARE KEEPING MR. WEINBERGER AND PROFESSOR SCHULTZ. SINCE FRANKLIN ROOSEVELT EVERY PRESIDENT DECLARED THAT THE UNITED STATES WILL NEVER RECOGNIZE DEOCCUPATION OF LITHUANIA, LATVIA AND ESTONIA. WE RECEIVED INFORMATION THAT SOME LEFTISTS IN THE JUSTICE DEPARTMENT ARE PRESSURING THE STATE DEPARTMENT TO BREAK THIS WHOLLY NON-RECOGNITION PRINCIPLE IN ORDER TO DEPORT A FORMER BALTIC STATES CITIZEN TO SOVIET RUSSIA. WE KINDLY ASK YOU TO LOOK INTO THIS MATTER. WE WISH YOU MR. PRESIDENT AND DEAR NANCY HEALTH AND HAPPINESS FOR NEW YEAR, A GREAT INAUGURATION AND FAMOUS YEARS IN HISTORY REMEMBERING YOU AS THE GLOBAL SHIELD.

BALYS RACKAUSKAS, PRESIDENT, ASSOCIATION OF LITHUANIAN AMERICAN
UNIVERSITY PROFESSORS
621 WELLINGTON AVE
CHICAGO IL 60657

02:50 EST

MGMCCMP

THE WHITE HOUSE

WASHINGTON

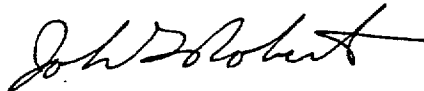
February 26, 1985

Dear Mr. Greene:

This is written in response to your letter of January 23 to the President. In that letter you noted that James D. Cullen had been indicted by a Federal grand jury, and you requested that the President intercede on his behalf.

Please be advised that it would be inappropriate and contrary to established White House policy for the President or any member of the White House staff to interfere in a pending criminal prosecution. Accordingly, no action is being taken in response to your request. I trust you will understand the reasons for this response.

Sincerely,



John G. Roberts
Associate Counsel to the President

Mr. Richard E. Greene
Post Office Box 8397
St. Louis, Missouri 63132

59

ID # 293933 CU

7003

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING

☐ H - INTERNAL

☐ I - INCOMING

Date Correspondence
Received (YY/MM/DD) 1/1/85

Re-direct

Name of Correspondent: Richard E. Preen

☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Indictment of James D. Cutler, Esquire, by
the St. Louis Federal Grand Jury

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUTLER</u>	ORIGINATOR	<u>85102106</u>			<u>1 1</u>
<u>CUAT 18</u>	Referral Note: <u>R</u>	<u>85102107</u>		<u>S</u>	<u>85102117</u>
	Referral Note:				
	Referral Note:				
	Referral Note:				
	Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

Richard Greene co.

SINCE 1958

293933 *CU*

1235 RESEARCH BLVD.
P. O. BOX 8397
ST. LOUIS, MO. 63132
PHONE: 314 994-0222
TELEX: 44-2302

11882 W. 91st ST.
OVERLAND PARK, KS. 66214
PHONE: 913 492-6886
TELEX: 42-6369

INDUSTRIAL CONTROLS • SALES • SERVICE • STOCK

35
Fred Feldman
January 23, 1985

President Ronald Reagan
The White House
Washington, D. C. 20013-9998

My Dear Mr. President:

I have been a supporter of yours from the very beginning.

I believe in the America that you do and am fighting my bottom off to keep the Socialist from further erosion of my liberties. Now I need your support.

James D. Cullen, a lawyer, and a close and life long friend of mine, has been indicted by the St. Louis Federal Grand Jury.

Jim Cullen is of the highest character and has been caught up in a situation which is not of his making.

I need the situation looked into and his name cleared as a tragedy could occur if justice isn't done for Jim.

Won't you please look into this situation and intercede on his behalf?

I am looking forward to hearing from you in reference to this situation.

Sincerely,

RICHARD GREENE COMPANY

Richard E. Greene
Richard E. Greene

REG:sw

INDUSTRIAL CONTROLS • SALES • SERVICE • STOCK

United States of America
**Office of
Personnel Management**

Office of the General Counsel
Washington, D.C. 20415

In Reply Refer To:

Your Reference:

March 27, 1985

MEMORANDUM FOR THE GENERAL COUNSELS
OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JOSEPH A. MORRIS
GENERAL COUNSEL
OFFICE OF PERSONNEL MANAGEMENT



SUBJECT: PRO BONO PUBLICO SERVICES
BY FEDERAL GOVERNMENT ATTORNEYS

Transmitted herewith is a copy of a new installment of the Federal Personnel Manual relating to the provision of legal services pro bono publico by attorneys employed by the United States Government.

Included in the FPM issuance is the text of the statement that has been adopted by the Federal Legal Council in opposition to proposals to amend 18 U.S.C. § 205 so as to permit Government attorneys to represent parties other than the United States in matters in which the United States is a party or has a direct and substantial interest.

In this issuance, the Government acknowledges that Federal attorneys may have an ethical obligation to the system of justice to provide pro bono services, and that such an obligation can normally be met in a variety of ways. (Indeed, it can be argued that service as counsel to the Federal Government is pro bono publico by definition). Care must be taken, however, to ensure that pro bono activities do not run afoul of 18 U.S.C. § 205 or any other rules, including internal agency guidelines and ethical standards, that may apply. Federal attorneys may not serve clients other than the Government on Government time or at Government expense, and should not accept pro bono assignments that may interfere with the timely discharge of official duties. Above all, it should be borne in mind that the United States Government as a client is entitled to the same degree of loyalty as is any other client.

You may wish to share these materials with the lawyers on your staffs.

Chapter 990

General and Miscellaneous

Contents

SUBCHAPTER 1. Personnel Litigation

1-1. General

1-2. Agency Responsibilities

◆ SUBCHAPTER 2. *Pro Bono Publico* Services by Federal Government Attorneys

2-1. General

2-2. Restrictions on *Pro Bono* Activities

Appendix A. Statement by the Federal Legal Council in Opposition to Amendment of 18 U.S.C. § 205 ◆

Subchapter 2. *Pro Bono Publico* Services by Federal Government Attorneys

2-1. General

a. Attorneys in the Federal Government often provide legal services *pro bono publico* when such activities do not present a conflict of interest with their Federal responsibilities. In addition to requirements and restrictions imposed upon *pro bono* services that are contained in relevant provisions of the Canons of Ethics (or relevant codes of professional responsibility), Federal attorneys must adhere to internal agency rules and Federal statutes governing conflicts of interest.

b. Various bar and other groups have advocated positions regarding *pro bono* work by Federal attorneys that may not be consistent with Federal law or policies. This subchapter clarifies the restrictions concerning *pro bono* activities by Federal attorneys.

2-2 Restrictions on *Pro Bono* Activities

a. The Federal Government recognizes that Federal attorneys may have an ethical obligation to the system of justice to provide *pro bono* services, and that such an obligation can normally be met in a variety of ways. Indeed, it can be argued that service as counsel to the Federal Government is *pro bono publico* by definition.

b. 18 U.S.C. § 205 prohibits Federal attorneys from acting as agent or attorney, with or without compensation, in any matter in which the Government has a direct and substantial interest (except certain personnel administrative proceedings). Attorneys should take care in selecting *pro bono* cases that such cases do not

fall within the purview of this restriction. Attorneys are encouraged (if not required by internal agency rules or policies) to seek advice from their superiors and Designated Agency Ethics Officials in interpreting and applying this statute with respect to any proposed *pro bono* services that they plan to undertake.

c. Federal attorneys may not perform *pro bono* services on Government time or at Government expense. See 61 Comp. Gen. 652 (1982). Similarly, attorneys may not utilize the services of other Federal employees on Government time to carry out otherwise impermissible *pro bono* services. In addition, OPM has concluded that Federal attorneys engaged in *pro bono* activities may not solicit Federal clerical employees to assist with *pro bono* work even on off-duty hours on a voluntary basis. See also Letter B-215476, to David B. Isbell, President, District of Columbia Bar, from Harry R. Van Cleve, Acting General Counsel, General Accounting Office (July 2, 1984).

d. Federal attorneys who consider performing *pro bono* services outside of their Government employment should consult their own agencies' internal guidelines. They should bear in mind that the United States Government as a client is entitled to the same degree of loyalty as any other client. In addition, Federal attorneys should not accept *pro bono* assignments that may interfere with the timely discharge of their official duties.

e. Appendix A contains the statement adopted by the Federal Legal Council.

Appendix A.

Statement by The Federal Legal Council in Opposition to Amendment of 18 U.S.C. § 205

The Federal Legal Council, established by Executive Order 12146 and composed of the Attorney General and General Counsels of the federal government, supports the facilitation of appropriate personal donations of pro bono legal services by federal attorneys.

There are, however, impediments that arise from the dual roles of an attorney who is also a federal employee. This is recognized by 18 U.S.C. § 205. Section 205 prohibits an employee from acting as agent or attorney for anyone before any department, agency, or court in any matter in which the United States is a party or has a direct and substantial interest.

The Council does not believe that government attorneys should be permitted to litigate against their own employer by representing pro bono clients in litigation against the federal government. Accordingly, the Federal Legal Council believes that the prohibition in 18 U.S.C. § 205 is needed and fully justified, and should not be amended.¹

Section 205 serves a legitimate purpose. The government has a clear interest in restricting activities by its employees that may be contrary to its interests. Permitting federal attorneys to litigate against the United States would raise inevitable ethical problems. The public expects complete compliance with ethical requirements and would not be well served by permitting its government's attorneys to be placed in a position where the conflicts of interest are so apparent and the opportunities for compromising their client's interests so plentiful.

The current ABA proposal to amend 18 U.S.C. § 205 appears to be based upon the argument that the size of the federal government is so great that employees of one governmental entity can represent pro bono clients in suits against other governmental entities without a conflict of interest arising. However,

conflicts may arise even where the attorney's pro bono representation involves litigation in an entirely different substantive area and against an entirely different governmental entity. For instance, an attorney in his pro bono capacity might have to challenge governmental jurisdictional defenses or make procedural attacks that would be (foreseeably or unforeseeably) applicable to his own agency or to governmental agencies generally. Moreover, by ignoring the extent to which information is and should be shared among various agencies and departments of the federal government, the proposed amendment of section 205 presents a real threat to confidentiality of the lawyer's primary "client"—the federal government. It does not seem useful to forego the existing clear-cut rule to create an amorphous situation demanding constant (and somewhat speculative) case-by-case analysis of whether a given government attorney's pro bono representation would raise such conflicts.

Therefore, the proposal to amend 18 U.S.C. § 205 raises questions regarding ethical obligations to avoid representation of a client which would adversely affect another client, and to exercise independent professional judgment on behalf of a client; to maintain a client's confidentiality; and to avoid the appearance of impropriety. *See, e.g.*, Canons 4, 5, and 9 of the Code of Professional Responsibility and Rules 1.6 and 1.7 of the ABA's new Model Rules of Professional Conduct.

The proposal is objectionable from a perspective of effective management of the federal government, as well as from an ethical perspective. The resolution ignores the extent to which agency policies and strategies—particularly in litigation—overlap and need to be coordinated. It is, to say the least, a questionable management practice, with dubious effects on morale, to have one employee litigating against another. And, as mentioned above, the proposed amendment of section 205 will chill the effective exchange of information within the federal government.

In short, we believe there is an inherent conflict in a government lawyer privately representing others

¹ It should be noted that the Council would not oppose considering an amendment eliminating the District of Columbia from the proscriptions of 18 U.S.C. § 205.

against the government or where the government has an interest in the case, and that this conflict cannot be overcome by the federal government's size. The fact that the federal government is large does not mean that it is not interconnected. The entire executive branch is, after all, responsible to one President.

Notwithstanding the current provisions of 18 U.S.C. § 205, government attorneys have a wide range

of opportunities to do pro bono work in areas not involving litigation against the United States. Similarly, the private bar is fully capable of providing pro bono representation in the one area in which government lawyers are barred from providing such services—against their own client, the federal government. Therefore, we oppose the proposed amendment of 18 U.S.C. § 205.

*U.S. GOVERNMENT PRINTING OFFICE: 1985-460-572:2173